

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Volume Cap Credits

Proposed Amendment: N.J.A.C. 5:80-33.9

Authorized By: New Jersey Housing and Mortgage Finance Agency, Anthony L. Marchetta,
Executive Director.

Authority: N.J.S.A. 55:14K-5.g and 26 U.S.C. § 42(m).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-039.

A **public hearing** on the proposal will be held on the following date and time at the following location:

Thursday, May 21, 2015, at 2:00 P.M.

New Jersey Housing and Mortgage Finance Agency Boardroom

637 South Clinton Avenue

Trenton, New Jersey 08611

Please call the Division of Tax Credit Services at (609) 278-7629 if you wish to be included on the list of speakers.

Submit comments by June 19, 2015, to:

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The agency proposal follows:

Summary

Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or entities that have invested in certain buildings providing housing for low-income families. As the housing credit agency for the State of New Jersey (State), the New Jersey Housing and Mortgage Finance Agency (NJHMFA or Agency) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The Low Income Housing Tax Credit (LIHTC) Program is one of a variety of resources used to stimulate the development of affordable housing. As with most State and Federal resources, the LIHTC Program is a limited resource with a finite dollar amount allocated to it each year. With the State's affordable housing needs continually growing, it is imperative to allocate this limited resource to obtain the greatest

results. The Agency has promulgated rules at N.J.A.C. 5:80-33 that set forth the standards and procedures used by the Agency to perform its allocation and monitoring responsibilities and that also represent the qualified allocation plan (QAP) for the State as required by Section 42 of the Code.

In order to eliminate a disparity between housing projects that apply for nine-percent tax credits and those that apply for tax credits entirely from volume cap (known as four-percent tax credits), the Agency is proposing new N.J.A.C. 5:80-33.9(c) to implement a seven-year period of ineligibility from participation in the LIHTC program for any general partner, voting member, developer, or a related party who owned a managing or controlling interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure or that has ongoing uncorrected issues of non-compliance. Under the QAP, projects financed by tax-exempt bonds that request four-percent tax credits do not have to compete for an award of those tax credits. N.J.A.C. 5:80-33.9(a). Accordingly, such projects are not currently subject to the QAP provisions at N.J.A.C. 5:80-33.15(a)15 and 16 that, with respect to projects competing for nine-percent tax credits, effect a five- to 15-point scoring deduction for applications that have a general partner, voting member, developer, or a related party that owns a managing or controlling interest in an LIHTC project where title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years or with uncorrected issues of non-compliance (such as violations of State and municipal maintenance ordinances or health ordinances or failure of one or more major systems or failure to fulfill any QAP provisions as represented by an owner in a project's New Jersey LIHTC application). Given the competitiveness of the nine-percent tax-credit application process, any negative points essentially render a project non-competitive. Proposed new N.J.A.C. 5:80-33.9(c) is intended to eliminate that disparity between projects

applying for four-percent tax credits and those applying for nine-percent tax credits and to close a loophole that might allow those who have mismanaged or inefficiently managed an LIHTC project to continue participation in the LIHTC program with impunity.

This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 17:30-3.3(a)5 because a 60-day comment period is being provided.

Social Impact

The proposed new rule is expected to improve the efficiency of projects partially financed through the State's allotment of low-income housing tax credits by imposing a seven-year period of ineligibility in the LIHTC program for those who have mismanaged or inefficiently managed LIHTC projects.

Economic Impact

The proposed new rule is expected to have a negative economic impact on those individuals who will be subjected to the rule's seven-year period of ineligibility because those individuals, and projects with which they are affiliated, will be ineligible during that time period from participation in the LIHTC program. Globally, the proposed new rule is expected to promote the more efficient use of low-income housing tax credits allotted to the State.

Federal Standards Statement

Section 42 of the Code establishes the low-income housing tax credit program and mandates that the State promulgate a qualified allocation plan. The proposed amendment does not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law (26 U.S.C. § 42 and the regulations promulgated thereunder at 36 CFR §§ 1.42 et seq.). Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rule is not expected to create or cause the loss of any jobs.

Agriculture Industry Impact

The proposed new rule is not expected to have an impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The proposed new rule will apply primarily to tax credit applicants and awardees, some of whom are small businesses as defined in section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. The Agency finds that the amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses; applicants for low-income housing tax credits are already required, as part of the application process, to disclose the circumstances that

would result in the prescribed period of ineligibility. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The Agency finds that the proposed new rule would impose an insignificant impact on the average cost of housing that will be affected by the amendment, because of both the limited scope of the amendment and the extreme unlikelihood that the amendment will evoke a change in the average costs associated with housing. The major impact of the amendment is targeted toward enhanced efficiency of housing projects financed through LIHTC awards. Accordingly, the requirement of a housing affordability impact analysis at N.J.S.A. 52:14B-4.1a is not applicable.

Smart Growth Development Impact Analysis

N.J.S.A. 52:14B-4.1b.b requires that prior to the adoption, amendment or repeal of any rule pursuant to N.J.S.A. 52:14B-4(a), State agencies include a smart growth development impact statement. The Agency finds that the proposed amendment will impose an insignificant impact, because of both the limited scope of the amendment and the extreme unlikelihood that the amendment will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The major impact of the amendment is targeted toward enhanced efficiency of housing projects financed

through LIHTC awards. Therefore, pursuant to N.J.S.A. 52:14B-4.1b.b, no smart growth development impact analysis is required.

Full text of the proposal follows (addition indicated in boldface **thus**):

5:80-33.9 Volume cap credits

(a) – (b) (No change.)

(c) Applicants that have a general partner, voting member, developer, or a related party who owned a managing or controlling interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure or that has ongoing uncorrected issues of non-compliance shall not be eligible for tax credits for a period of seven years from the date of entry of the judgment of foreclosure, the date of the deed in lieu of foreclosure, or the date all issues of non-compliance are deemed corrected by the Agency, whichever shall have occurred most recently.